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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,080	08/21/2003	Erik John Hasenoehrl	9344	6935

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EXAMINER	
AHMED, HASAN SYED	

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/645,080	HASENOEHRL ET AL.	
	Examiner	Art Unit	
	Hasan S. Ahmed	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-41* is/are pending in the application.

4a) Of the above claim(s) *36-41* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/6/04;2/11/05;3/21/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of Applicants': (1) Response to Restriction Requirement filed on 24 July 2006; and (2) Information Disclosure Statements filed on 6 February 2004, 11 February 2005, and 21 March 2005.

Election/Restrictions

Applicant's election with traverse of Group I (claims 1-35) in the reply filed on 24 July 2006 is acknowledged. The traversal is on the ground that an examination of all original claims presented does not present a serious burden on the Examiner. This is not found persuasive because elements in Group II exist which require searches in areas not required for Group I.

The requirement is still deemed proper and is therefore made FINAL.

Claims 36-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected groups, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on 24 July 2006.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 16 recites lathering surfactant content in the claimed article of up to 1500 weight percent of the article. The weight of surfactant cannot be more than 100 weight percent of the article, if the surfactant is integrated into the article.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15, 17-19, 24, 25, 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Slavtcheff, *et. al.* (U.S. Patent No. 6,451,331).

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (*see* col. 2, lines 10-30).

The disclosed article is the instant article as claimed:

- the effervescent composition of instant claims 1, 24, and 30 (*see* col. 2, line 16);
- the liquid-permeable first layer comprising a web (as defined in paragraph 0016 of the instant specification) layer of instant claims 1, 24, and 30 (*see* col. 2, line 67 – col. 3 line 9; col. 3, lines 32 and 46-56; figure 2);
- the cleansing composition (surfactant) of instant claims 1, 24, and 30 (*see* col. 2, line 24);

- the pouch comprising a second layer comprising at least two webs associated with an effervescent composition of instant claim 2, 25, and 31 (*see* col. 3, lines 54-56; figure 2);
- the pouch made of the non-woven material of instant claim 3 (*see* col. 3, line 6);
- the laminate comprising a second layer comprising at least two webs and effervescent composition associated with the webs of instant claim 4 (*see* col. 2, line 67 – col. 3 line 9; col. 3, lines 32 and 46-56; figure 2).
- the laminate made of the non-woven material of instant claim 5 (*see* col. 3, line 6);
- the layers bonded together about the perimeter of the article of instant claim 6 (*see* col. 3, lines 48-49);
- the at least about 1.5% of effervescent composition of instant claim 7 (*see* col. 4, line 62);
- the effervescent composition comprising the alkaline and acidic materials of instant claim 8 (*see* col. 4, lines 14-16);
- the alkaline material, *inter alia*, the azides of instant claim 9 (*see* col. 4, lines 20-25);
- the alkaline material, *inter alia*, the sodium bicarbonate of instant claim 10 (*see* col. 4, lines 20-25);
- the acidic material, *inter alia*, the toluene sulfonic acid of instant claim 11 (*see* col. 4, lines 20-25);

- the acidic material, *inter alia*, the succinic acid of instant claim 12 (*see* col. 4, lines 20-25);
- the about 1 weight percent to about 80 weight percent of the total weight of the effervescent composition of alkaline material of instant claim 13 (*see* col. 4, lines 24-26);
- the about 0.5 weight percent to about 80 weight percent of the total weight of the effervescent composition of alkaline material of instant claim 14 (*see* col. 4, lines 50-53);
- the cleansing composition on at least one surface of the first layer of instant claim 15 (*see* col. 2, line 24);
- the cleansing composition consisting of, *inter alia*, the anionic lathering surfactants of instant claim 17 (*see* col. 5, line 3);
- the anionic lathering surfactants consisting of, *inter alia*, the taurate phosphates of instant claim 18 (*see* col. 5, line 2);
- the hard water tolerant surfactants consisting of, *inter alia*, the nonionic lathering surfactants of instant claim 19 (*see* col. 5, line 4);

The Slavtcheff, *et. al.* reference is silent with respect to the "Steady Flash Lather Volume" of instant claim 1, the "Steady Total Lather Volume" of instant claim 24, and the "Rinsability Percent" of instant claim 30. Applicant's article is the same as the prior art. It contains the same components in the same configuration. Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205

USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 2, 20-23, 24-29, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bries, *et. al.* (U.S. Patent No. 5,110,843).

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (*see* above).

The Slavtcheff, *et. al.* reference differs from the instant application in that it teaches neither the third layer of instant claims 20, 26, and 32, nor the fourth layer of instant claims 22, 28, and 34.

Bries, *et. al.* teach a cleaning article comprising multiple layers (*see* col. 5, lines 23-40).

The disclosed article may contain a layer comprising a cleaner or detergent, as recited in instant claims 21, 23, 27, 29, 33, and 35 (*see* col. 5, lines 49-52).

Bries, *et. al.* explain that multiple layers are beneficial for "...support, reinforcement, strength, abrasiveness, etc." *See* col. 5, lines 49-52.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a third and fourth layer to the second layer of the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third layer to the cleansing article for, *e.g.*, support, reinforcement, strength, and abrasiveness, as explained by Bries, *et. al.*

2. Claims 1, 2, 22, 23, 28, 29, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bergquist, *et. al.* (U.S. 2003/0064042 A1).

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (*see* above).

The Slavtcheff, *et. al.* reference differs from the instant application in that it does not teach the high loft material of instant claims 22, 23, 28, 29, 34, and 35.

Bergquist, *et. al.* teach use of a high loft material in a personal cleansing article (*see* paragraph 0014).

Bergquist, *et. al.* explain that use of a high loft material in a personal cleansing article imparts the benefits of increased aeration and improved latherability (*see* paragraph 0015).

The Bergquist, *et. al.* reference is silent with respect to the density of the high loft material recited in instant claims 22, 28, and 34. Applicant's article is the same as the prior art. It contains the same components in the same configuration. Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205

USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

The Bergquist, *et. al.* reference does not teach the thickness of high loft material recited in instant claims 22, 28, and 34; however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable thickness through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in thickness will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such thickness is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant thickness.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a high loft material to the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third high loft material for the benefits of increased aeration and improved latherability, as explained by Bergquist, *et. al.*

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 10/645,079 ('079). Although the conflicting claims are not identical, they are not patentably distinct from each other because '079 claims a layered article for cleansing body surfaces (claim 1) comprising an effervescent composition (claim 1) and a surfactant (claim 17).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/949,833 ('833). Although the conflicting claims are not identical, they are not patentably distinct from each other because '833 claims a laminate structure (claim 1) comprising an effervescent composition (claim 1).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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